

NAZI BENEFITS TERMINATION ACT OF 1999

SEPTEMBER 14, 1999.—Ordered to be printed

Mr. HYDE, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 1788]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1788) to deny Federal public benefits to individuals who participated in Nazi persecution, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 1788, the Nazi Benefits Termination Act of 1999 (the “Act”), renders individuals who are determined to have been participants in Nazi persecution ineligible for federal public benefits.

BACKGROUND AND NEED FOR THE LEGISLATION

The Department of Justice's Office of Special Investigations (OSI) is responsible for investigating former Nazi persecutors who entered and established residence in the United States under false pretenses after the Second World War. In many cases OSI investigations lead to formal denaturalization and deportation proceedings that result in loss of federal public benefits, but in some cases former Nazi persecutors, once discovered, leave the United States voluntarily for fear of public disclosure and deportation. Those who leave voluntarily may continue to receive federal public benefits.

Records cited by Congressman Franks, the author of H.R. 1788, indicate that over the past few decades, a total of forty-four individuals who were charged as former Nazi persecutors have collected Social Security benefits, and eight such individuals continue to receive such benefits as of June 1999. In addition, OSI continues to pursue hundreds of additional individuals who are believed to have participated in Nazi persecution and are still living in the United States. Without H.R. 1788, former Nazi persecutors who evade final deportation orders may continue to receive federal public benefits for many years.

Under H.R. 1788, an immigration judge may hold a hearing to determine whether an individual was a participant in Nazi persecution, and the immigration judge's determination is subject to review by the Attorney General. If an individual is found to have been a participant in Nazi persecution, an immigration judge (or the Attorney General) shall issue an order prohibiting the individual from receiving federal public benefits, but the individual may appeal the order to the Court of Appeals for the Federal Circuit.

HEARINGS

No hearings were held on H.R. 1788.

COMMITTEE CONSIDERATION

On June 22, 1999, the Subcommittee on Immigration and Claims met in open session and ordered favorably reported the bill H.R. 1788 by voice vote, a quorum being present. On July 20, 1999, the Committee met in open session and ordered favorably reported the bill H.R. 1788 by voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM FINDINGS

No findings or recommendations of the Committee on Government Reform were received as referred to in clause 3(c)(4) of rule XIII of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House Rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1788, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 23, 1999.

Hon. HENRY J. HYDE, *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1788, the Nazi Benefits Termination Act of 1999.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kathy Ruffing, who can be reached at 226-2820.

Sincerely,

DAN L. CRIPPEN, *Director.*

H.R. 1788—Nazi Benefits Termination Act of 1999.

H.R. 1788 would stiffen restrictions on payments of federal benefits to people who participated in Nazi persecution. Under current law, former Nazis are pursued by the Office of Special Investigations (OSI) in the Department of Justice and may ultimately be stripped of their legal immigrant or naturalized citizen status and made to leave the United States. At that time, they also lose eligibility for federal benefits. A handful of people, though, have short-circuited the OSI's investigation by leaving the United States in the midst of proceedings. Such people can then continue to collect Social Security (the only significant federal benefit that is sent to people living abroad). H.R. 1788 would permit the Attorney General to continue proceedings in such cases and allow respondents living overseas to participate by video conference. The bill would also clarify the law by directing that, because these are civil rather than criminal proceedings, the standard of proof required is a preponderance of the evidence; a few Circuits have demanded a higher standard.

CBO estimates that implementing H.R. 1788 would have no significant effect on the federal budget. Based on information from the Department of Justice, CBO expects the number of people affected,

and hence the savings in Social Security, to be very small. Effects on other benefit programs would be even tinier. Pay-as-you-go procedures would apply to this bill, but CBO estimates that the effects would not be significant.

H.R. 1788 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Kathy Ruffing, who can be reached at 226–2820. This estimate was approved by Paul N. Van de Water, Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, section 8, clause 1 of the Constitution.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title.

Section 1 provides that H.R. 1788 may be cited as the “Nazi Benefits Termination Act of 1999.”

Section 2. Denial of Federal Public Benefits to Nazi Persecutors.

Section 2(a). Denial of Benefits. Section 2(a) provides that an individual who is determined to have been a participant in Nazi persecution is not eligible for federal public benefits.

Section 2(b). Definitions. Section 2(b) defines the term “federal public benefit” by reference to section 401 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which limits the eligibility of some aliens for certain federal public benefits. The term “participant in Nazi persecution” is defined by reference to sections 212(a)(3)(E) and 237(a)(4)(D) of the Immigration and Nationality Act of 1952, which renders certain participants in Nazi persecution or genocide inadmissible and deportable.

Section 3. Determination of Status as Nazi Persecutor.

Section 3(a). Hearing by Immigration Judge. If the Attorney General has reason to believe that an individual who has applied for or is receiving a federal public benefit may have been a participant in Nazi persecution, she may provide for a hearing on the matter and may delegate the conduct of the hearing to an immigration judge.

Section 3(b). Procedure. Section 3(b)(1) grants the respondent the right to appear at his hearing. Under section 3(b)(1)(A), a respondent may appear in person if he is a United States citizen, a permanent resident alien, or present within the United States when the proceeding is initiated. Other respondents, under section 3(b)(1)(B), may appear by video conference. Section 3(b)(1)(C) provides that the Act shall not be construed to permit the return to the United States of an individual who is inadmissible as a Nazi persecutor under the Immigration and Nationality Act.

Section 3(b)(2) provides the respondent at a hearing with the right to counsel (but at no expense to the federal government), and the rights to present evidence, cross-examine witnesses, and obtain

the compulsory attendance of witnesses and presentation of evidence. Section 3(b)(3) provides that the rules of evidence at a hearing shall be the same rules applicable to removal proceedings before immigration judges.

Section 3(c). Hearings, Findings and Conclusions, and Order. Section 3(c)(1) provides that an immigration judge shall make findings of fact and conclusions of law within 60 days after the end of a hearing. Section 3(c)(2)(A) provides that a finding that a respondent was a Nazi persecutor shall result in the prompt issuance of an order declaring the respondent ineligible for federal public benefits and prohibiting any person from providing such benefits, and the order shall be transmitted to governmental entities or persons providing such benefits. Section 3(c)(2)(B) provides that a finding that the respondent was not a Nazi persecutor shall result in an order dismissing the proceeding. Finally, section 3(c)(2)(C) provides that an order cutting off federal public benefits to a Nazi persecutor shall be effective on the date of issuance, but no person or entity shall be found to have provided benefits in violation of the Act unless it received actual notice of the order and had a reasonable opportunity to comply therewith.

Section 3(d). Review by Attorney General. Section 3(d)(1) provides that the Attorney General may review any finding, conclusion, or order made by an immigration judge under the Act, and shall complete her review within 30 days after the finding, or order; otherwise, the finding, conclusion, or order shall be final. Section 3(d)(2) provides that when a final order is issued, the Attorney General shall cause the underlying findings of fact and conclusions of law, and a copy of the final order, to be served on the respondent involved.

Section 3(e). Judicial Review. Any party aggrieved by a final order may obtain a review of the order by the United States Court of Appeals for the Federal Circuit, by filing a petition for review within 30 days after the order is issued.

Section 3(e). Issue and Claim Preclusion. In any administrative or judicial proceeding under the Act, the ordinary rules of issue preclusion and claim preclusion shall apply.

Section 4. Jurisdiction of United States Court of Appeals for the Federal Circuit.

Section 4 makes a conforming change in the law to ensure that the United States Court of Appeals for the Federal Circuit has jurisdiction over appeals brought under Section 3(e).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTION 1295 OF TITLE 28, UNITED STATES CODE

§ 1295. Jurisdiction of the United States Court of Appeals for the Federal Circuit

(a) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction—

(1) * * *

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(13) of an appeal under section 506(c) of the Natural Gas Policy Act of 1978; **[and]**

(14) of an appeal under section 523 of the Energy Policy and Conservation Act~~[""]~~; *and*

(15) of an appeal from a final order issued under the Nazi Benefits Termination Act of 1999.

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